

United States
Circuit Court of Appeals
For the Ninth Circuit.

ARCHIE A. CLONINGER,

Plaintiff in Error,

vs.

A. H. FINLAISON,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Third Division.

Filed

OCT 15 1915

F. D. Monckton,

Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,
Third Division.*

Names and Addresses of Attorneys of Record.

Messrs. T. J. DONOHOE and E. E. RITCHIE, Valdez, Alaska,

Mr. O. A. TUCKER, Juneau, Alaska,

Attorneys for the Plaintiff and Plaintiff in
Error.

Mr. MAURICE D. LEEHEY, Seattle, Washington,
817 Alaska Building,

Attorney for Defendant and Defendant in
Error. [2*]

*In the District Court for the Territory of Alaska,
Third Division.*

Filed in the District Court, Territory of Alaska,
Third Division. Oct. 15, 1914. Arthur Lang, Clerk.
By T. P. Geraghty, Deputy.

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINDLANSON,

Defendant.

Amended Complaint.

Comes now the above-named plaintiff and after
leave of the Court first had and obtained, files this
his amended complaint and for cause of complaint

*Page-number appearing at foot of page of certified Transcript of
Record.

against the above-named defendant alleges as follows:

I.

That plaintiff was and at all times hereinafter mentioned qualified to locate, hold and own, mining claims in the Territory of Alaska and to possess the same. That on the 2d day of August, 1913, plaintiff located pursuant to the laws of the United States and the Territory of Alaska a certain placer mining claim known as and called No. 1 Bear Creek Placer mining claim in the White River Recording Precinct, Territory of Alaska, hereinafter more particularly described, and ever since has been, and now is the owner thereof and entitled to the immediate possession of the same.

II.

That on the said 2d day of August, 1913, plaintiff went upon the unoccupied and unappropriated domain in the Territory of Alaska, in the White River Recording Precinct, at a point on Bear Creek, which is tributary of Big Eldorado Creek, the latter being a tributary of Wilson Creek and Wilson Creek being a tributary of Chisana River, and located a placer mining claim on said Bear Creek embracing a tract of land 1320 feet in length and 660 feet in width and named and called said mining claim No. 1 Bear Creek placer mining claim. Said claim is bounded and described as follows: Commencing at the initial stake which is 330 feet more [3] or less from the intersection of said Bear Creek with Big Eldorado Creek in a southerly direction and running thence 330 feet to corner No. 1, running thence 1320 feet southerly

to corner No. 2; thence 660 feet easterly to Corner No. 3; thence 1320 feet northerly to Corner No. 4; thence 330 feet westerly to place of beginning. And appropriated and claimed said mining claim by reason of discovery and location under and by virtue of the laws of the United States and of the Territory of Alaska.

III.

That before making said location, to wit, on the 2d day of August, 1913, said plaintiff made a discovery of gold-bearing placer ground carrying gold in workable quantities at a point within the exterior boundaries of said mining claim as hereinabove described; that at the time of making said discovery he posted conspicuously at the point of discovery a notice of location containing (a) name of the claim, to wit, No. 1 Bear Creek Placer Mining Claim (b) the name of the locator, to wit, Archie A. Cloninger (c) the date of the discovery and posting of notice, to wit, the second day of August, 1913; (d) the number of feet in length and width claimed, to wit, 1320 feet long by 660 feet wide; and in all other respects complied with the laws of the United States and of the Territory of Alaska in regard to the making of discovery and location of placer mining claims. That at the time of the posting of the notice of location, he distinctly marked the location on the ground so that the boundaries might be readily traced by placing at each corner thereof substantial stakes or posts not less than three feet high above the ground and about three inches in diameter and hewed on the sides facing the claim. Said corner posts were marked

with the name or number of the claim and the designation of the corner by number and the corner posts nearest the discovery monument was marked corner No. 1, and the other corner posts were marked in regular rotation. This claim is located on open ground and the side lines were marked by stakes so as to readily lead from one corner to another of such claim, and in all respects the boundaries of said claim are marked as [4] required by law. That within ninety days from the date of said discovery and prior to the filing of the certificate of location the said plaintiff performed or caused to be performed labor upon said claim in developing the same in amount which was and is equivalent in the aggregate to one hundred dollars worth of work based on the going wages in the White River Recording Precinct at that time, which said work constituted the location work as required by the laws of Alaska; that thereafter and within ninety days after the discovery, to wit, on the 16th day of August, 1913, the plaintiff caused to be recorded in the precinct wherein such claim is situated in Volume 1 at page 181 of the records of the White River Recording Precinct, a certificate of location, which certificate contained the name of the claim, the name of the locator, the date of discovery and posting of location notice, the number of feet in length and width claimed, such certificate also set forth a description of such location with reference to natural and permanent monuments, a description of the boundaries, corner posts and markings thereon, and a description of the location work and the place where the same

was performed. Said certificate of location was verified by the plaintiff and locator before a notary public authorized to administer oaths.

IV.

That the plaintiff did not during the calendar month of August, 1913, or during any other month in said year, locate or cause to be located in his name more than two mining claims in the Territory of Alaska.

V.

That the nature of plaintiff's estate in the land embraced in and covered by said mining claim is that of owner of a legally located, unpatented placer mining claim; that the fee of said land still remains in the United States Government; that said plaintiff is the owner of the said mining claim, land and premises under and by virtue of his location and appropriation of the mining laws of the United States and Territory of Alaska and is entitled the immediate possession of the same and the whole thereof. [5]

VI.

That plaintiff being in the possession of said mining claim and premises as aforesaid, the defendant on or about the —— day of August, 1913, unlawfully and without right entered into the possession of the same and ousted the plaintiff therefrom and ever since and now does wrongfully and unlawfully withhold the possession of said mining claim from plaintiff to his damage in the sum of one thousand dollars; that the defendant ever since said date has acted as and claimed to be the owner of said mining claim and premises as aforesaid.

WHEREFORE, plaintiff prays judgment against the defendant for the restitution of and the possession of the above-described mining claim and premises and the whole thereof; and for damages in the sum of one thousand dollars for the wrongful and unlawful withholding of the possession of said mining claim and premises from plaintiff and for his costs and disbursements in this action.

O. A. TUCKER,
T. J. DONOHOE and
E. E. RITCHIE,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Archie A. Cloninger, being first duly sworn, on oath, deposes and says: That he is the plaintiff named in the foregoing amended complaint; that he has read the same, knows the contents thereof, and declares the allegations therein contained to be true.

ARCHIE A. CLONINGER.

Subscribed and sworn to before me this 23d day of March, A. D. 1914.

[Seal]

O. A. TUCKER,
Notary Public for Alaska, Residing at Cordova.
My commission expires July 28, 1917. [6]

Receipt of the foregoing amended complaint by copy is hereby acknowledged this 25th day of March, 1914.

MAURICE D. LEEHEY,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Mar. 28, 1914. Arthur Lang, Clerk. [7]

*In the District Court for the Territory of Alaska,
Third Division.*

C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Answer.

The defendant answers the Amended Complaint as follows:

I.

The defendant admits the qualification of plaintiff to locate mining claims in Alaska, but denies every other allegation in paragraph 1 of the amended complaint.

II.

The defendant denies every allegation in paragraph II. of the amended complaint.

III.

The defendant denies every allegation in paragraph III. of the amended complaint.

IV.

The defendant has no knowledge of the facts alleged in paragraph IV of the amended complaint and therefore denies the same.

V.

The defendant denies every allegation in paragraph V of the amended complaint.

VI.

The defendant admits that he has at all times acted as and claimed to be the owner of the mining claim and premises described in the amended complaint, and that he actually holds the sole possession thereof, but denies every other allegation in paragraph VI of the amended complaint.

And the defendant for a further answer and as an [8] affirmative defense to the cause of action stated in the Amended Complaint, alleges as follows:

I.

That at all the times stated in the Amended Complaint, and ever since July 3d, 1913, the defendant was and now is the owner of and entitled to the possession, and during all of said time was and now is lawfully in the possession, by right of discovery and location in accordance with the law and local customs, and regulations, of that certain placer mining location situated within the White River Precinct and Recording District of Alaska, designated as No. 1 on Bear Creek, a tributary of Eldorado Creek, which latter is a tributary of Wilson Creek, flowing into the Shushana River designated by the United States Geological Survey as the Chisana River; that said placer mining location was initiated by a valid discovery of placer gold made by one Andrew M. Taylor as the agent and attorney in fact for and on behalf of this defendant; that said discovery was made on the last named date at a point now included within

the limits of the placer claim herein named; that immediately after said discovery, and on the same day, the said Taylor duly posted notice of such location on behalf of this defendant, designating the claim as No. 1 on Bear Creek, and marked the boundaries thereof by proper stakes and monuments so that the same could be readily traced; that not more than two placer mining locations were made by or on behalf of this defendant within the Territory of Alaska during the said calendar month, or during any calendar month.

II.

That this Court, by its order herein entered on May 7th, 1913, created the White River Precinct and Recording District of Alaska, including therein the region wherein such location was made and where the ground in controversy in this action is situated; that a recorder was appointed for said District, but the exact location of the recording office therein was not designated; that the district so created included [9] practically all of that portion of the Third Judicial Division of Alaska which lies north and east of the summit of the Alaska Range of mountains; that there are no towns whatever situated within said district, and no roads or established trails whatever into or across the same; that the region was wholly inaccessible during the summer months after May 7th, 1913, except by means of poling boats on the larger rivers, and thence across a mountainous and uninhabited country, where no regular lines of travel or communication were established; that the said district is so situated that

communication with its various parts is impossible except at irregular intervals of weeks and months; that the recorder appointed for said district did not arrive therein and no recording office was established therein until on or about July 25th, 1913.

III.

That said Andrew M. Taylor was duly authorized to locate mining claims for this defendant and to do all acts necessary or deemed advisable to perfect the location and record of mining claims in the Territory of Alaska, which authority was contained in a power of attorney duly executed in writing and acknowledged by this defendant on May 29th, 1913; that at all times herein stated this defendant resided outside the Territory of Alaska; that said power of attorney was delivered to the said Taylor, who took the same with him upon a prospecting trip into the region included in the White River Precinct and Recording District of Alaska # with the intention in good faith of promptly recording the same there upon his arrival, but was prevented from doing so by the delay in the arrival of the recorder, and the consequent delay in establishing a recording office in said district; that it was impossible to record said power of attorney in any other recording office in the Third Judicial Division of Alaska without making a trip involving great expense and the loss of at least two months time during the most valuable season for prospecting, and the [10] said Taylor was dissuaded from attempting to record such power of attorney elsewhere by reason of the fact that such recording district had been duly created,

and a recorder duly appointed, and the said Taylor had reason to believe and did believe that such recording office would be promptly established at some convenient place within said district.

IV.

That on July 12th, 1913, the miners and prospectors then in the so-called Shushana region within the limits of the White River Precinct and Recording District as established by the order of this Court, duly assembled in meeting after due notice in writing stating the time and place of the proposed meeting had been publicly posted and circulated for more than five days prior thereto; that said meeting was attended by practically all of the miners and prospectors then in said district, and it was there determined advisable to organize a local mining district and to establish a recording office, which was accordingly done by unanimous vote of all persons, present at said meeting; that thereupon E. Fred Wann was unanimously elected as recorder of said local mining district and he thereupon duly qualified as such and immediately established such recording office and received mining locations and other documents for record, and duly recorded the same, and maintained such office open at all business hours, and the records by him made and established were publicly kept for the inspection of all persons; that such office was so continued until the arrival of the duly appointed United States Commissioner and ex officio recorder for said White River Precinct and Recording District on or about July 25th, 1913, when all records so made and kept by the said E. Fred Wann as rec-

order were promptly delivered to the recorder appointed by this Court, and the same were thereupon duly transcribed and recorded in the official records of the said White River Precinct and Recording District of Alaska and are now recorded and maintained therein.

V.

That the said power of attorney from the defendant [11] to said Andrew M. Taylor was duly recorded with the said E. Fred Wann on July 12th, 1913, and the same was thereafter on or about July 25th, 1913, duly recorded at page 18 in volume 1 of the records of the White River Precinct and Recording District of Alaska, and is now of record therein; that said Taylor perfected the location of the placer mining claim designated as No. 1 on Bear Creek and duly executed on behalf of this defendant, and filed for record with the said E. Fred Wann on July 12th, 1913, a notice of location thereof stating the name of the claim, the name of the location, the date of discovery and posting of the notice of location, the number of feet in length and width claimed, and the description of the same with reference to natural objects and permanent monuments, so that the claim might be readily located and the boundaries thereof readily traced upon the ground, and the same was thereafter, on or about July 25th, 1913, duly recorded at page 21 in volume 1 of the official records of the White River Precinct and Recording District of Alaska and is now of record therein.

VI.

That on or about August 5th, 1913, the plaintiff

made a clandestine and unlawful entry upon a portion of the ground included in said placer location designated as No. 1 on Bear Creek, then and now possessed and occupied by the defendant, and attempted to post thereon, and made a pretended posting thereon of an alleged notice of placer location; that all the acts done by the plaintiff and in his behalf in connection with the pretended location of such alleged placer claim were done while trespassing upon the rights and property of the defendant, and over the protest of the defendant and his representatives upon the ground.

WHEREFORE, the defendant, having fully answered, prays that plaintiff take nothing by his amended complaint, but that the defendant be decreed to be the owner and entitled to the possession of the placer mining claim designated as No. 1 on Bear Creek as herein described, and that defendant have judgment [12] against plaintiff for costs.

MAURICE D. LEEHEY,

J. J. FINNEGAN,

Attorneys for Defendant.

United States of America,

Territory of Alaska,—ss.

Maurice D. Leehey, being first duly sworn, says: That he is the attorney for the defendant A. H. Finlaison, in this action; that he has read the foregoing answer to the amended complaint and knows the contents thereof; that the said defendant is at present absent from the Territory of Alaska, and for that reason this verification is made by affiant as his attorney; that affiant believes all the allegations in

the foregoing answer to be true.

MAURICE D. LEEHEY.

Subscribed and sworn to before me this 26th day
of March A. D. 1914.

O. A. TUCKER,
Notary Public.

My commission expires July 28, 1917.

Service accepted and copy received March 26th,
1914.

O. A. TUCKER,
Attorney for Plaintiff.

[Endorsed]: Filed in the District Court, Terri-
tory of Alaska, Third Division, Mar. 27, 1914. Ar-
thur Lang, Clerk. By K. L. Monahan, Deputy.
[13]

*In the District Court for the Territory of Alaska,
Third Division.*

C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Motion to Strike.

Comes now the above-named plaintiff and moves
this Honorable Court for an order striking from
defendant's answer on the ground that the same is
irrelevant matter and does not constitute a defense
to any of the allegations contained in plaintiff's
amended complaint, as follows:

I.

Moves to strike all of paragraph II from defendant's affirmative and further answer.

II.

Moves to strike all that portion of paragraph III of defendant's further answer and affirmative defense following the phrase "White River Precinct and Recording District of Alaska," contained on the 10th and 11th lines of said paragraph III.

T. J. DONOHUE,

E. E. RITCHIE,

Attorneys for Plaintiff.

Service of the foregoing motion is hereby accepted this 30th day of March, 1914, by receiving a copy thereof.

M. D. LEEHEY,

J. J. FINNEGAN,

Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Mar. 30, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy.
[14]

*In the District Court for the Territory of Alaska,
Third Division.*

Special March 1914 Term—March 31st, 15th Court
Day.

Entered Cordova Journal No. 2, Page 212.

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Minute Order Denying Motion to Strike.

Comes now the above-named plaintiffs, by their attorneys, T. J. Donohoe and E. E. Ritchie, and move the Court for an order to strike certain portions of defendant's answer; defendant in the above-numbered are represented by Maurice D. Leehey and J. J. Finnegan. Whereupon after arguments by the respective counsel,

IT IS ORDERED by the Court that said motion be and the same is hereby denied, to which order and ruling of the court plaintiff excepts and exception is duly allowed,

WHEREUPON IT IS ORDERED that defendant have until one day after the close of the trial in cause No. C-73, Dan D. Sutherland, vs. F. W. Purdy, in which to file their reply. [15]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Reply.

Comes now the above-named plaintiff and for reply to the affirmative and further answer of the defendant admits, denies and alleges as follows:

1.

Referring to the first paragraph of said affirmative and further answer plaintiff denies each and every allegation therein contained.

2.

Referring to the second paragraph of defendant's affirmative and further answer plaintiff admits that this Court, by order entered on the 7th day of May, 1913, created the White River Recording Precinct and admits that the ground in controversy in this action is situated in the White River Recording Precinct and admits that a recorder was appointed for said precinct, but denies each and every other allegation in such paragraph contained and alleges that the order dated May 7, 1913, appointing a recorder for said precinct specified and designated the place where said recorder would hold his office as "Wiley" at the junction of Sola Creek and the White River.

3.

Referring to the third paragraph of said further answer and affirmative defense plaintiff denies each and every allegation therein contained. [16]

4.

Referring to the fourth paragraph of said further answer and affirmative defense, plaintiff denies each and every allegation therein contained.

5.

Referring to the fifth paragraph of said further answer and affirmative defense, plaintiff denies each and every allegation therein contained and alleges that the instrument therein referred to as a power of attorney, recorded on page 18 of Volume One of the records of the White River Recording Precinct is in words and figures as follows, to wit:

“No. 1—A. H. Finlaison to A. M. Taylor, absolute.

Power.

Attorney. Drawn by G. C. Cole, American Consul, Dawson.
29th May 1913. Rec. 8:35 A. M. July 12/13.”

6.

Referring to the sixth paragraph of defendant's further answer and affirmative defense plaintiff denies each and every allegation therein contained.

WHEREFORE plaintiff prays judgment in accordance with the prayer of his amended complaint.

T. J. DONOHUE, and
E. E. RITCHIE,

Attorneys for Plaintiff.

Service of the above and foregoing Reply is hereby

accepted and verification of said reply is hereby waived.

LEEHEY & FINNEGAN,
Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. April 4, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy.
[17]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAINSON,

Defendant.

Bill of Exceptions and Transcript of Record.

BE IT REMEMBERED, That the above-entitled cause came on duly and regularly to be heard at Cordova, in the Third Judicial Division, Territory of Alaska, on Thursday, the 9th day of April, 1914, at 10 o'clock A. M. of said day, before the Honorable FRED M. BROWN, Judge of said court and a jury:

The plaintiff herein being represented by his attorneys and counsel, T. J. Donohoe, Esq., and E. E. Ritchie, Esq.:

The defendant herein being represented by his attorneys and counsel, Maurice D. Leehey, Esq., and J. J. Finnegan, Esq.:

The jury having been empaneled, opening state-

ments were made by Mr. Ritchie on behalf of the plaintiff and by Mr. Finnegan on behalf of the defendant:

WHEREUPON the following proceedings were had and done: [18]

CLONINGER, ARCHIE A.—

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[19]

[Testimony of Archie A. Cloninger, for Plaintiff.]

ARCHIE A. CLONINGER, the plaintiff, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination by Mr. RITCHIE.

Q. You may state your name.

A. Archie A. Cloninger.

Q. Where do you reside? A. Chitina, Alaska.

Q. How long have you resided in Chitina?

A. Since November, 1912.

Q. What are you doing at Chitina?

A. Working in the hotel there for my brother.

Q. You are the plaintiff in this case? A. I am.

Q. Are you an American citizen? A. I am.

Q. Where were you born?

A. Portland, Oregon.

Q. And have lived in the United States all your life?

A. And have lived in the United States all my life.

Q. You have lived in Alaska a year and a half?

A. Almost, yes; came here November, 1912.

Q. Where did you come from to Alaska?

(Testimony of Archie A. Cloninger.)

A. Seattle.

Q. Were you ever in the Shushana district?

A. I was in the Shushana district last summer in the month of July and August, the last of July and along the fore part of August.

Q. When did you arrive there?

A. The 30th day of July, 1913.

Q. In what part of the district did you first stop?
[20*—2†]

A. At Johnson Creek, about a quarter of a mile below the mouth of Bonanza.

Q. Who was with you, if anyone?

A. Ed Maddox and Shorty Gwin.

Q. Did you do any prospecting on the creeks?

A. I did.

Q. Where did you go first?

A. I went up Bonanza, up Little Eldorado, Gold Run and crossed the divide and went down Big Eldorado.

Q. When did you go on Big Eldorado?

A. On the first day of August.

Q. When did you go on to Bear Creek?

A. On the first day of August, the forenoon.

Q. Is Bear Creek a tributary of Big Eldorado?

A. It is.

Q. You got on to Bear Creek the same day you did Big Eldorado, the first of August? A. Yes, sir.

Q. What time of the day?

A. Between nine and ten o'clock in the morning.

*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Testimony as same appears in Certified Transcript of Record.

(Testimony of Archie A. Cloninger.)

Q. Who was with you?

A. I was by myself that time.

Q. What did you do on Bear Creek?

A. I prospected some along the creeks and examined some of the claims and also location notices.

Q. Did you go onto the ground which you are claiming in this action? A. I did.

Q. Did you find anything on the ground in the day of artificial monuments or posts? [21—3]

A. I found a monument and some corner stakes; there was absolutely no writing on them to show what they were there for.

Q. You found a monument? A. I did.

Q. Where was that?

A. I found the center end monument; it was supposed to be the initial monument, I guess.

Q. At which end?

A. The lower end of the claim.

Q. How far is that from Big Eldorado Creek, from the junction?

A. Just one claim, half a claim width, 330 feet.

Q. There is a part of a claim lying between Bear Creek No. One claim, the subject of this action, and Big Eldorado Creek?

A. Yes, the side lines of No. One on Big Eldorado Creek ran along there.

Q. Did you find any notice on that claim?

A. Yes, sir.

Q. Do you remember what statements were contained in it?

A. Why, it was a notice of location for Mr. Fin-

(Testimony of Archie A. Cloninger.)

lainson, by A. M. Taylor—power of attorney .

Q. Did you notice the date on it?

A. I think it was staked on the second day of July.

Q. What did you do that day on the ground, anything? The first day of August?

A. Why, I panned a little along the creek there.

Q. Did you find anything as the result of your panning?

A. Yes, I found some colors, just very light colors.

Q. Did you pan more than one pan?

A. Yes, I panned several pans. [22—4]

Q. What did you find, each time about the same?

A. About the same; once or twice I was skunked.

Q. What did you do that night, did you remain there?

A. No, sir, I went back to the recorder's office and asked the deputy recorder, Mr. Waller, asked him to see the books and he said, I will show you the books.

Q. That was that night, the first of August?

A. That was that night, the first of August. So we looked at the books and couldn't find no place where A. M. Taylor had a power of attorney recorded there and he was acting under a power of attorney for Finlaison.

Q. What books did you look at?

A. Just the one book he had there that day.

Q. Did he tell you they had only one book?

Mr. LEEHEY.—We object to any statement made by Mr. Waller.

Objection overruled. Defendant allowed an exception.

(Testimony of Archie A. Cloninger.)

A. Why, he said, "This is the only book we have up to this time."

Q. What did you and Mr. Waller do with reference to that book?

A. We looked in the book for the power of attorney and there was no record there for Taylor or Finlainson.

Q. There was no record of a power of attorney to Taylor from Finlainson? A. No, sir.

Q. Now, what did you do the next day, if anything?

A. I went back there and staked the property. I was told before I left if the power of attorney was not recorded previous to the staking, or they didn't have a power of attorney, the ground was open for relocation and I was going according to law.

Q. (By the COURT.) What date was this?

A. I went back on the second day of August. [23—5]

Q. You say you had been advised you could relocate any claim which purported to be located by someone under a power of attorney when he didn't have any power of attorney?

A. Yes, I was advised; we had quite a discussion at Chitina and I was not satisfied and I seen the Commissioner and also an attorney to find out and paid him a fee to find out.

Q. That was before you went in?

A. That was before I went in, and they advised me it must be recorded previous to the location.

Q. What did you do that morning you went back,

the morning of the second of August?

A. I went back and staked the ground—put up my initial stake or lower center end monument.

Q. Where did you put that?

A. Right at the creek, just at the side line of No. One Big Eldorado.

Q. At each end of the claim located?

A. At each end of the claim.

Q. That would be your center end stake?

A. That would be my center end stake.

Q. Did you give the claim a name?

A. Bear Creek No. One.

Q. Did you put up any monument there?

A. I put up a monument of rock about three feet or three and a half high, probably four feet.

Q. And what did you do about a notice?

Mr. LEEHEY.—The defendant will admit that the pretended location of Mr. Cloninger was sufficiently marked on the ground on the second day of August, 1913.

Mr. RITCHIE.—We offer a copy of the original notice posted so [24—6] as to get it into the record.

By the COURT.—What does the defendant admit?

Mr. LEEHEY.—That the claim was sufficiently marked on the ground.

The WITNESS.—This is the notice I put on Bear Creek No. One on August 2d, 1913. That is a copy of the notice.

By the COURT.—The defendant admits the proper marking on the ground and the posting of

(Testimony of Archie A. Cloninger.)

notice on the ground according to law on the second day of August, 1913?

Mr. LEEHEY.—Yes, sir.

(The copy of notice is admitted in evidence and marked Plaintiff's Exhibit "A.")

Q. That is all you did that day?

A. That is all I did that day.

Q. Did you go back to the claim afterwards?

A. I went back to the claim on the 5th, got there the morning of the 5th and started to work.

Q. Who was with you?

A. Ed Maddox was with me and we did the assessment work.

Q. What did you do?

A. We put in an open cut about forty feet long and I think it was either four and a half feet deep or three feet deep—it was 40 feet by $41\frac{1}{2}$ by 3.

Q. How many days' work How many days did you work?

A. Five days, the two of us—that made ten days for one man.

Q. Did you afterwards file a certificate of location under the statute?

A. Yes, sir; after we got our assessment work done we filed it—recorded the location notice and also the assessment work.

Mr. RITCHIE.—We offer this in evidence.
[25—7]

Mr. RITCHIE.—We desire at this time to offer a certified copy of the record of this certificate of location showing the assessment work as required by the statute.

(Testimony of Archie A. Cloninger.)

Mr. LEEHEY.—I want to make this objection. Defendant objects to the admission in evidence of the purported location notice and proof of assessment work of the plaintiff Cloninger, First, for the reason that the same contains no description of the location of the claim with reference to natural objects, permanent monuments or well-known mining claim; Second, that there is no description of the boundaries, corner monuments or markings on the ground; Third, that there is no sufficient description of the location work alleged to have been performed and no description whatever of the place on the claim where the same was performed; and Fourth, that the alleged location notice is not verified as required by law. The defendant urges these objections especially in view of the requirements of the Act of the Alaska Territorial Legislature approved April 30, 1913.

By the COURT.—This notice is open to some criticism. It differs from the one introduced in the last case; it is different as to form; it contains some things omitted there and does not contain some things included in the other. I think it substantially complies with the essential requirements of the statute and the objection will be overruled. To which ruling of the Court defendant is allowed an exception.

Mr. LEEHEY.—The objections made by the defendant simply went to the sufficiency of the document and manner of proof. There is a general agreement between counsel in all these [26—8] cases

(Testimony of Archie A. Cloninger.)

that copies may be made from the official records of the White River Recording Precinct now in the possession of the clerk of the court and may be certified by the clerk of the court to the same effect as if certified by the duly appointed recorder of the precinct. We admit these are copies of the record.

By the COURT.—The record will so show.

(The Notice of Placer Location with proof of labor attached admitted in evidence and marked Plaintiff's Exhibit "B.")

Mr. RITCHIE.—You may cross-examine.

Cross-examination by Mr. LEEHEY.

Q. You say you went on this ground on the first day of August, 1915? A. Yes, sir.

Q. And you only arrived in that Shushana region on the evening of the 30th of July?

A. I arrived in the Shushana region on the evening of the 30th of July, yes, sir.

Q. And went directly to this property?

A. I went over to the property the next morning, on the first day of August.

Q. You had some previous advice concerning this, hadn't you?

A. I heard that all the creeks were staked.

Q. And you heard that this staking by power of attorney was invalid and insufficient to hold ground unless the power of attorney was recorded before staking? Yes, sir.

Q. And you heard this particular claim was staked, No. One on Bear Creek? [27—9]

A. I went to find the Judge.

(Testimony of Archie A. Cloninger.)

Q. Wasn't it evident to you in advance?

A. No, sir, it was not. I was walking up the creeks and I see all the claims had location notices made out on boards.

Q. Then you just went along the creeks looking for some claim located by a power of attorney where the power of attorney was not recorded?

A. No, sir.

Q. How came you to go out so quickly after your arrival in the camp and find this particular claim?

A. I suppose I was going there to sit down—

Q. Answer my question.

A. I went up there on the first day of August; I went in there to locate ground and prospect and that is what I done when I went in there.

Q. This claim is about eight or ten miles from where you camped? A. No, sir.

Q. Where did you camp?

A. Camped at the mouth of Bonanza, about a quarter of a mile.

Q. When you first went in there—did you camp that very night at the mouth of Bonanza?

A. Yes, sir; about a quarter of a mile below the mouth of Bonanza on Johnson Creek.

Q. How far is that as you would have to travel to go to Big Eldorado Creek?

A. About five miles.

Q. Then you went right over there the next morning?

A. I went right up the creeks and crossed there.

Q. And walked up to this particular claim? [28
—10]

(Testimony of Archie A. Cloninger.)

A. No, sir, not up to this particular claim; I crossed right—went over the divide to the head of Eldorado.

Q. Where did you strike Eldorado Creek?

A. At the head of Eldorado.

Q. And walked down the creek?

A. And walked down the creek.

Q. To this claim? A. To this claim.

Q. This was the first one you found staked by power of attorney?

A. This was not the first claim I found.

Q. That you found staked by power of attorney I say? A. No, sir.

Q. Did you find any other claim staked by power of attorney before you got to this one?

A. No. One.

Q. Was that staked by power of attorney?

A. I am pretty sure it was staked by power of attorney.

Q. Do you recall by whom?

A. Why that was a claim that the notices were mixed up and we couldn't find out just how they lay, how the ground lay.

Q. Now, is it not a fact that you were looking for some claim that was staked by power of attorney?

A. I was looking for ground.

Q. And you were looking for some claim located by power of attorney, too, were you not? You had in mind that a location made by power of attorney, without the previous record of that power of attorney, was invalid, and you were looking for that sort

(Testimony of Archie A. Cloninger.)

of claim? A. I had in mind they were valid.

Q. If staked by power of attorney? [29—11]

A. Yes, sir.

Q. And the power of attorney was not previously recorded?

A. And the power of attorney was not previously recorded—that the ground was open to relocation.

Q. You mean invalid—you said valid?

A. I mean invalid.

Q. And you were looking for that sort of a claim?

A. Yes, sir.

Q. And when you found this claim you immediately went back to the recorder's office to investigate?

A. No, I went back to Big Eldorado and when I went to camp that night I investigated.

Q. You noticed several claims recorded by power of attorney? A. Yes, sir.

Q. And you went back to look up the records to see if they were recorded? A. Yes, sir.

Q. And you found what you were looking for?

A. I found what I was looking for.

Q. So you knew that this particular claim was ground that was included in the claim called No. One Bear Creek located by Taylor for Finlaison, didn't you?

A. That is what I looked up.

Q. And you mean to say that you knew the ground was already claimed by another?

A. They had a location notice on there.

Q. And you knew they were claiming it?

(Testimony of Archie A. Cloninger.)

A. Yes, they were claiming it, but not according to the law.

Q. You knew they were claiming it just the same?

A. Yes, sir. [30—12]

Q. What attorney in Chitina was it told you these claims were invalid?

A. Paul d'Heirry, our Commisioner.

Q. Did you talk to Mr. Foster about it?

A. I talked to Mr. Foster also and Paul d'Heirry was with him.

Q. And they told you such locations were invalid?

A. Yes, sir.

Q. And you concluded you would go over and get some of those invalid locations? A. No, sir.

Q. Have you ever been in a mining camp before in your life? A. No, sir.

Q. You never did any placer mining?

A. I never did any placer mining.

Mr. LEEHEY.—That is all.

(By Mr. RITCHIE.)

Q. How many mining claims did you locate during the month of August? A. Two.

Q. What were they?

A. No. One Bear Creek and No. 4 Below Upper Discovery on Big Eldorado.

Q. Were you interested in any other claims?

A. No, sir, only Mr. Maddox, my partner, located a claim in Skookum Gulch, known as No. 2a.

Q. Does he have an interest in this claim with you?

A. Maddox and I are in together on all my claims.

(Testimony of Archie A. Cloninger.)

Q. What interest did you have in the locations you made?

A. Maddox and I were sent in there by grub-stake. [31—13]

Q. And what was your interest in it?

A. My interest has been one-quarter of each claim.

Q. And you had a quarter interest in each of those two claims you located, which would be half a claim? A. Yes, sir.

Q. And what interest did you have in anything located by Maddox?

A. I have the same in the Maddox claims I did in my own.

Q. He located one claim?

A. He located one claim and I located two.

Q. You had three-quarters of a claim, a quarter interest in three claims? A. Yes, sir.

Q. You arrived the night of the 30th of July?

A. Yes, sir.

Q. And went up to this creek on the first of August? A. Yes, sir.

Q. The second day after your arrival?

A. The second day after my arrival—the first day I went up to where James was sluicing and along Eldorado and back to the camp.

Q. Mr. Leehey wanted to know if you were out there looking for claims located by power of attorney. Was there any general talk up there about there being lots of claims located by power of attorney?

A. That was the general talk of the camp.

(Testimony of Archie A. Cloninger.)

(By Mr. LEEHEY.)

Q. Who is your other partner besides Mr. Maddox?

A. Mr. Tom Cloninger and Mr. A. C. Murphy.
[32—14]

Q. Where do they live? A. In Chitina.

Q. Then Tom Cloninger, A. C. Murphy, Mr. Maddox and yourself own a quarter interest in whatever location you claim in this case? A. Yes, sir.

Q. Now, you say you also located No. One Above Discovery on Little Eldorado? A. I did not.

Q. What was your other claim?

A. Number 4 Below Upper Discovery on Big Eldorado.

Q. There is a claim that was previously located by Mr. Thomas Doyle?

A. Yes, sir, for Asa Markley.

Q. And that is another claim you thought was invalid because located by power of attorney?

Mr. RITCHIE.—We object to that as irrelevant and immaterial and not cross-examination.

Objection sustained. Defendant allowed an exception.

Q. You have testified concerning your interview with Mr. Waller, the deputy recorder, and I believe stated he had then in his possession only one book. I now ask you to examine the book which is marked Volume One of the records of the White River Recording Precinct and state whether or not that is the same books which Mr. Waller showed you at that time?

(Testimony of Archie A. Cloninger.)

A. I can look at the book on the outside and say it is not the same book; the book we had in there was a black book if I am not mistaken.

Q. You say it is not the book he had? [33—15]

A. I don't think it is.

Q. Are you positive it is not?

A. I couldn't say positive, it don't look like the book we had.

Q. This is a black book except it has red trimmings—or a blue-black book, unless I am color blind?

A. I guess you are color blind—it is not black.

Q. You are very positive that this is not the book that Mr. Waller showed you?

A. I wouldn't swear positively but I don't think it is the book.

Q. Examine the contents of this book,—that will assist you in reaching a positive statement; just look at the contents of the book and see if you can recognize anything in it.

A. I never had the book in my hand. Mr. Waller got the book and we looked through it and he said there was no power of attorney that was recorded.

Q. You took his word for it?

A. Mr. Waller took the book and he showed me—he said, there is absolutely no power of attorney recorded here; I had the book in my hand as I have now.

Q. Did you look at the pages? A. Yes, sir.

Q. Did you read the pages? A. Yes, sir.

Q. I want to know whether, when you say there was nothing in the book, you are testifying to what

(Testimony of Archie A. Cloninger.)

you know yourself positively or what Mr. Waller told you.

A. What I know myself and what he told me.

[34-16]

Q. Both? A. Yes, sir.

Q. You swear that book contained nothing of a power of attorney from Finlainson to Taylor?

A. Yes, sir, at that time.

Q. And you also swear positively that this book marked Volume One of the records of the White River Recording Precinct is not the book you saw?

A. I will not swear positively, but I don't think it is the book.

Q. You don't think so? A. No, sir.

(By Mr. RITCHIE.)

Q. How much of a search did you make in the book?

A. We started in along about the first of the book; he said, we will start in in July, so we started in about the month of July and went through.

Q. Did you turn it page by page?

A. I turned it page by page, yes, sir.

Q. As far as the records appeared in it?

A. Yes, sir.

Q. How much of the book was full at that time?

A. About half full, I suppose.

(By Mr. LEEHEY.)

Q. About how many pages were there in the book do you suppose? A. I don't know.

Q. Was it a book as large as this one?

A. No, I don't think it was as large.

(Testimony of Archie A. Cloninger.)

Q. This book appears to contain 300 pages.

A. The other book then probably was a couple of hundred pages. [35-17]

Q. Were they as large as those, the sheets?

A. About the same sized book, yes, sir.

Witness excused.

[Testimony of E. C. Maddox, for Plaintiff.]

E. C. MADDUX, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct examination by Mr. RITCHIE.

Q. What is your name? A. E. C. Maddox.

Q. Where do you reside? A. Kennecott.

Q. How long have you lived in Alaska?

A. Sixteen years.

Q. What is your business? A. Mining.

Q. Has that been your business practically all the time? A. Yes, sir.

Q. You were a miner outside before you came to Alaska? A. No, sir.

Q. Are you an American citizen? A. I am.

Q. What is your native state? A. Kentucky.

Q. You came from there to Alaska?

A. Yes, sir.

Q. In '98? A. In '98.

Q. Were you ever in the Shushana district?

[36-18]

A. I was.

Q. When did you go in there?

A. Arrived the 30th day of July.

(Testimony of E. C. Maddox.)

Q. In company with whom, if anybody?

A. Archie Cloninger and Shorty Gwin.

Q. Were you interested with Cloninger in any way? A. Partner on that trip.

Q. Did he have any other partner besides yourself?

A. His brother and Murphy financed the trip for us.

Q. You were grubstaked, you and Archie, by Tom Cloninger and Mr. Murphy? A. Yes, sir.

Q. And what interest were you to have in anything you might locate, were you to divide equally, a quarter interest each? A. Yes, sir.

Q. Where did you stop the night you got into the Shushana district?

A. A quarter of a mile below the mouth of Bonanza, on what is known as Johnson Creek.

Q. Were you ever on the claim known as No. One Bear Creek? A. Yes, sir.

Q. When did you go on there?

A. Some time in August.

Q. About what time? The exact date is not important.

A. Somewhere along between the 5th and 15th.

Q. Did you go there with anybody?

A. Archie Cloninger, yes.

Q. What did you go there for?

A. To do the assessment work necessary, One hundred dollars worth of work necessary before recording the claim. [37-19]

(Testimony of E. C. Maddox.)

Q. And what did you and Archie Cloninger do there?

A. We started about 30 or 40 feet from his initial monument and run an open cut about 40 feet long the best I remember.

Q. How many days did you and Cloninger work there?

Mr. RITCHIE.—I didn't get those dimensions.

Mr. LEEHEY.—We admit that, the sufficiency of the work.

Q. Did you see any work elsewhere on the claim, any assessment or development work?

A. No, sir.

Q. Did you go over the claim to any extent?

A. Yes, sir.

Q. Pretty thoroughly?

A. Walked over it two or three times to the upper end and back.

Q. What were the going wages of the camp at that time?

A. It was supposed to be \$12.50 a day; there wasn't much to go by, there wasn't anybody employing any help up there outside of James and Hamshaw.

Q. You two did ten days work? A. Yes, sir.

Mr. RITCHIE.—That is all.

Mr. LEEHEY.—We have no cross-examination.
Plaintiff rests.

[Motion for a Nonsuit, etc.]

Mr. LEEHEY.—The defendant moves for a nonsuit and that the jury be instructed to bring in a verdict in this case for the defendant, for the reason that it appears from the testimony that the ground attempted to be located by the plaintiff on the 2d day of August, 1913, as a placer mining [38-20] claim was not at that time according to the testimony of the plaintiff himself open and unoccupied public mineral lands of the United States and for the reason that the testimony shows that on that date, when the plaintiff went upon this ground, he observed there the notice of location and the stakes or monuments of the defendant, claiming the ground under a location made in July as a placer mining claim, designated as No. One on Bear Creek and the plaintiff himself expressly states that he made the location of the ground in accordance with advice theretofore given him that such location had been made by power of attorney and such power of attorney was not of record, the location was invalid and for that reason he located this ground or attempted its location as a placer mining claim. That is our motion and we submit the motion should be sustained.

By the COURT.—In this case the plaintiff admits he went on this ground and found a notice of location and found the stakes on the ground and as I have held in all these cases where the question has arisen, it was not the purpose or intent of this Wickersham Act to require the recording

of the power of attorney prior to the initial step or the first step in making the location. I do not believe in this case that it is incumbent upon the defendant to go any further and I believe the motion ought to be granted and the motion will be granted. The jury will be instructed to bring in a verdict in favor of the defendant.

Mr. RITCHIE.—We save an exception to the order of the Court granting the motion for a nonsuit and we also except to the order directing the jury to bring in a verdict, for the reason that if the nonsuit is granted, there is no room left for a directed verdict. The motion for a nonsuit I [39-21] take it disposes of the case and no verdict is necessary.

By the COURT.—I am not clear upon this matter. We don't want to make any mistake about this part of it. You had better take the time to look into it and see that the proper course is followed.

Mr. RITCHIE.—At this moment I can recall but one case of a motion for nonsuit being granted, but it appears in our practice that the motion for a nonsuit disposes of the case.

By the COURT.—I am satisfied on the record made that there is no use proceeding any further, that the plaintiff has not sustained the cause of action. The ground was not open, unappropriated ground at the time on the statements and admissions of the plaintiff himself but I will take until two o'clock to enquire into the matter and I should like to have counsel do so also. The court will be in recess until 2 o'clock.

Afternoon Session.

By the COURT.—In this case of Cloninger versus Finlaison I have found since the adjournment this morning that it is necessary to modify the ruling that I have made. In explanation I might say this—that these cases were delayed in getting at issue. I tried to look into them before coming down to Cordova at all, but they were not at issue and I have never had the opportunity and time I would like to have had to look into the various questions, some of which are new to this jurisdiction. This is a very important matter and I do not desire to act hastily. It is of the utmost importance that these questions be settled and settled right and as speedily as possible. I desire to make [40–22] the record here so that either side, if they feel aggrieved may present it fairly and as speedily as possible to the Appellate Court, because it is important to every one to have the law settled. Now I believe that this exhibit, marked Plaintiff's Exhibit "B", which is the declaratory statement or verified notice of location, together with proof of location work, does not conform to the requirements of the statute. I feel satisfied that is the law and while it was admitted and a similar one, differing somewhat in the facts set out in it was admitted in another case, I feel that it is right to rule in this case that this notice of placer location, Plaintiff's Exhibit "B", which was objected to at the time by the attorney for the defendant be excluded and the objection will be sustained—that will be the order.

Mr. DONOHOE.—We desire an exception to the

ruling of the Court. (Exception allowed.)

Mr. DONOHOE.—As I understand it that exhibit becomes part of the record, subject to your ruling; the exhibit goes up with the record.

By the COURT.—I presume so.

Mr. LEEHEY.—If not, it may be properly marked for identification.

By the COURT.—The record will show the ruling of the Court before the case was submitted or final action taken, that the objection to this is sustained.

Mr. DONOHOE.—And it may also show that the exhibit will go up as part of the record?

By the COURT.—Yes, sir. Mr. LEEHEY, do you desire to amend or change your motion after this ruling of the Court? [41-23]

Mr. LEEHEY.—My impression is that the motion is designed as I presented it to include that objection; I had that in mind as one of the grounds of insufficiency of evidence and our motion is generally a motion for nonsuit.

By the COURT.—Your motion may be renewed at this time or after the ruling.

Mr. LEEHEY.—The defendant now moves for a nonsuit in this case and for a judgment of nonsuit against the plaintiff, and that the jury be directed to render a verdict herein in favor of the defendant, for the reason that the plaintiff has failed to make out a case sufficient to go to the jury and such a showing only has been made on the part of the plaintiff as would require the Court to set aside any verdict that the jury might hereafter render in favor of the plaintiff.

By the COURT.—The motion will be granted. I think the proper practice is the dismissal of the action by a judgment of nonsuit, so that the jury will be discharged from further consideration of the case.

Mr. RITCHIE.—I understand the Court will grant the nonsuit and does not direct a verdict?

By the COURT.—Yes, sir.

Mr. RITCHIE.—We save an exception to the order granting a nonsuit.

Exception allowed.

By the COURT.—Gentlemen of the Jury, you may be discharged from further consideration of the case.

[42-24]

**[Certificate of Official Stenographer to Transcript of
Testimony.]**

I, Isaac Hamburger, do hereby certify that I am the official court stenographer for the Third Judicial Division, Territory of Alaska; that as such official stenographer I reported the proceedings had at the trial of the above-entitled cause, to wit, Archie A. Cloninger versus A. H. Finlainson, No. C-75 of the records of said court; that the above, consisting of twenty-four (24) typewritten pages is a full, true and correct transcript of the testimony introduced at said trial.

Dated at Valdez, Alaska, this 11th day of June, 1914.

I. HAMBURGER. [43]

**[Certificate of Clerk U. S. District Court to
Plaintiff's Exhibit "B."]**

United States of America,
Territory of Alaska,
Third Division,—ss.

I, the undersigned clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the attached is a full, true and correct copy of the original Notice of Location and Proof of Labor Recorded in Book 1, page 181, of the White River Precinct, Territory of Alaska, Third Division, Plaintiff's Exhibit "B," as the same appears on file and of record in my office.

In Testimony Whereof, I have subscribed my name and affixed the seal of the said Court at Valdez, Alaska, this 7th day of April, 1914.

[Seal]

ARTHUR LANG,
Clerk.

By K. L. Monahan,
Deputy. [43a]

**[Plaintiff's Exhibit "B"—Notice of Placer
Location.]**

NOTICE OF PLACER LOCATION.

Notice is hereby given that the undersigned, a citizen of the United States has on this 2d day of August, 1913, discovered at the place where this notice is posted a valuable placer deposit bearing gold and I do hereby locate and claim the same as the No. 1 Bear creek placer mining claim. This claim is situated in the White River Mining District, Territory of Alaska.

The point of discovery whereon this notice is posted is situated close to initial post or monument Bear Creek is tributary to Big Eldorado and from thence the boundaries of said claim are marked as follows: (Initial Post.)

I claim 1320 ft. up stream from this post and 330 ft. each side of this post (20 acres). The boundary of this claim is marked by 4 corner posts and 2 center posts. The 4 corner posts are willow posts and centers are rock monuments.

Notice dated and posted on the date aforesaid.

ARCHIE C. CLONINGER,

Locator and Claimant.

Filed by A. Cloninger at 11 A. M., Aug. 16, 1913.
H. E. Morgan, Recorder. By M. R. Healy, Deputy.
2.00

PROOF OF LABOR.

White River Recording Office. August 16, 1913.

I, the undersigned, hereby certify that I have done more than One Hundred Dollars' worth of labor and improvements on the No. 1 Bear Creek Placer Claim which consists of Open Cut $4\frac{1}{2}'$ by $3'$ by 40 feet, and was done in ten eight hour days.

ARCHIE A. CLONINGER.

Subscribed and sworn to before me this 16th day of August, 1913.

HORATIO E. MORGAN,

Notary Public.

Filed for record by A. Cloninger, at 11 A. M., Aug. 16, 1913. H. E. Morgan, Recorder. By M. R. Healy, Deputy. Seal, 3.00. Plaintiff's Exhibit "B." [44]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Judgment.

This cause came regularly on for trial in open court on April 9th, 1914, and the parties were present in person and by their respective counsel, and the cause proceeded to trial and the jury was duly sworn and empaneled to try said case, and testimony on the part of the plaintiff was introduced.

Whereupon the plaintiff announced that his testimony in chief was concluded and rested his case, and then the defendant moved for a nonsuit and for judgment in favor of the defendant for the dismissal of this action, which motion was argued by counsel for the respective parties and sustained by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff take nothing by this action, but that his complaint be dismissed, and that the defendant, A. H. Finlaison, have judgment against the plaintiff, Archie A. Cloninger, for his costs to be taxed by the clerk.

Done in open court and signed and order entered herein this 11th day of April, 1914.

FRED M. BROWN,
Judge.

Attest: ARTHUR LANG,
Clerk.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Apr. 11, 1914. Arthur Lang, Clerk.

Entered Court Journal No. C-2, page No. 250.
[45]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

**Order [Extending Time to October 15, 1914, to File
Bill of Exceptions, etc.].**

On motion of plaintiff for an order of this Court extending the time in which plaintiff may prepare, settle and file his bill of exceptions to be used on a writ of error from the judgment of this court to the United States Circuit Court of Appeals for the Ninth Circuit, and to fix the amount of the cost bond on said writ of error or appeal.

IT IS HEREBY ORDERED that said plaintiff shall have to and including the 15th day of October,

1914, in which to prepare, settle and file his said bill of exceptions.

IT IS FURTHER ORDERED that the cost bond of plaintiff in the matter of said appeal or writ of error be, and the same is hereby, fixed at the sum of Five Hundred (\$500.00) Dollars, the sureties of said bond to be approved by the clerk of this court in case the Judge of this court is absent from Valdez, Alaska, when said bond is presented for filing.

Done in open court at Cordova, Alaska, this 10th day of April, 1914.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Apr. 10, 1914. Arthur Lang, Clerk.

Entered Court Journal No. C-2, page No. 238.

O. K.—Maurice D. Leehey, E. E. Ritchie. [46]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff and Plaintiff in Error,

vs.

A. H. FINLAISON,

Defendant and Defendant in Error.

Order Settling Bill of Exceptions.

It is ordered that the foregoing bill of exceptions consisting of copies of the amended complaint, an-

swer, motion to strike from answer, minute order denying motion to strike from answer, Plaintiff's Exhibit "B," reply, judgment, order extending time for settling and filing bill of exceptions, reporter's transcript of record, and assignments of error, be and the same is hereby settled as the bill of exceptions on writ of error in this cause.

Signed in open court at Seward, Alaska, this 15th day of October, 1914.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Oct. 15, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal S-1, page 320. [47]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff and Plaintiff in Error,

vs.

A. H. FINLAISON,

Defendant and Defendant in Error.

Assignment of Errors.

Now comes the plaintiff, Archie A. Cloninger, and files the following assignment of errors, upon which he will rely in the prosecution of his writ of error in this cause.

FIRST.

The Court erred in denying plaintiff's motion to

strike from defendant's answer, on the ground that the same was irrelevant and did not constitute a defense to plaintiff's amended complaint, the following portions of said answer, to wit:

All of paragraph two, and all of paragraph three following the words "The White River Precinct and Recording District of Alaska," contained in the tenth and eleventh lines of said paragraph three.

SECOND.

The Court erred in excluding from the evidence in the case, over the objection of plaintiff, the certificate of plaintiff's location of the ground in controversy and of his performance of the location work thereon required by law, filed by plaintiff in the recorder's office of the White River Precinct, and offered by him in evidence, to which ruling of the Court plaintiff then and there excepted and the exception was by the Court duly allowed.

THIRD.

The Court erred in excluding and striking out from the evidence in the case, over the objection of plaintiff, the certificate of plaintiff's location of the ground in controversy [48] and of his performance of the location work thereon required by law, filed by plaintiff in the recorder's office of White River Precinct, after defendant had made a motion for a nonsuit and a directed verdict in favor of defendant and against the plaintiff, at the conclusion of plaintiff's testimony, said certificate having been previously admitted by the Court as evidence in the case, to which ruling of the Court plaintiff then and there excepted and the exception was by the Court duly allowed.

FOURTH.

The Court erred in granting defendant's motion for a nonsuit at the close of plaintiff's testimony.

FIFTH.

The Court erred in entering judgment in this cause in favor of defendant and against the plaintiff.

Wherefore, plaintiff in error prays that the judgment of the District Court of Alaska, Third Division, may be reversed.

T. J. DONOHOE and
E. E. RITCHIE,

Attorneys for Plaintiff and Plaintiff in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
[49]

*In the District Court for the Territory of Alaska,
Third Division*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Petition for Writ of Error.

Now comes the plaintiff above named and says: That on the 11th day of April, 1914, in the above-entitled court made and entered a judgment herein against the plaintiff, granting motion of defendants for a nonsuit and adjudging that plaintiff take

nothing by his action, and that his complaint be dismissed, and that defendant have judgment for costs; that in said judgment and in the proceedings had prior thereto, certain errors were committed to the prejudice of plaintiff, all of which more fully appears in the assignment of errors, filed in this petition.

WHEREFORE plaintiff prays that a writ of error may issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the errors so complained of, and that the transcript of the record, testimony, proceedings and papers in this case, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had in the premises as may be proper therein.

T. J. DONOHOE and

E. E. RITCHIE,

Attorneys for Plaintiff.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

[50]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Defendant.

vs.

A. H. FINLAISON,

Defendant.

Order Allowing Writ of Error.

On this 24 day of March, 1915, comes Archie A. Cloninger, the above-named plaintiff, and plaintiff, and plaintiff in error herein, by his attorneys of record. And the said plaintiff by his said attorneys of record filed herein and presented to the Court his petition praying for the allowance of a writ of error, and praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit. And at the same time and place said plaintiff presented and filed herein his assignment of errors intended to be urged by him.

Now, therefore, in consideration of the premises, the Court being fully advised in the premises, it is

ORDERED, That the aforesaid writ of error be, and the same is, hereby allowed upon said plaintiff giving bond according to law in the sum of five hundred dollars for the costs of appeal, and upon said writ of error.

It is further ordered that a transcript of the record and proceedings and papers in the cause,

duly authenticated, be sent to said United States Circuit Court of Appeals for the Ninth Circuit. [51]

Dated at Valdez, Alaska, this 24 day of March, 1915.

FRED M. BROWN,
District Judge.

[Endorsed as follows]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 24, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. Entered Court Journal No. 9, page No. 34. [52]

*In the District Court for the Territory of Alaska,
Third Division.*

C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Archie A. Cloninger, as principal, and H. T. Whitley and Edwin Eckern, as sureties, are hereby held and firmly bound to A. H. Finlaison, respondent, upon this writ of error, in the sum of five hundred dollars (\$500.00), lawful money of the United States, to be paid to the aforesaid A. H. Finlaison, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, jointly and severally, firmly by these presents.

Dated this 24th day of March, 1915.

WHEREAS, Archie A. Cloninger, the above-named plaintiff, lately at a session of the District Court for the Territory of Alaska, Third Division, in said court, between Archie A. Cloninger, plaintiff, and A. H. Finlaison, defendant, judgment was rendered against said plaintiff and in favor of said defendant, and the said plaintiff, Archie A. Cloninger, having obtained from said Court an order allowing a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment rendered in the aforesaid action, and a citation, directed to A. H. Finlaison, is about to be issued, citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in San Francisco, California. [53]

Now, the condition of the above obligation is such, that if the said plaintiff, Archie A. Cloninger,, above named, shall prosecute his said writ of error to effect, and shall answer all damages and costs that may be awarded against him, if he fails to make his plea good, then this obligation is to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 24th day of March, 1915.

ARCHIE A. CLONINGER, (Seal)

Principal.

By T. J. DONOHOE, (Seal)

His Attorney of Record.

H. T. WHITLEY, (Seal)

Surety,

EDWIN ECKERN, (Seal)

Surety,

The sufficiency of the foregoing sureties on the foregoing bond and the bond itself is approved this 24 day of March, 1915.

FRED M. BROWN,
District Judge.

Filed in the District Court, Territory of Alaska,
Third Division. Mar. 24, 1915. Arthur Lang,
Clerk. By T. P. Geraghty, Deputy. [54]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Writ of Error.

The President of the United States of America, To
the Honorable FRED M. BROWN, Judge of
the District Court for the Territory of Alaska,
Third Division, Greeting:

Because in the record and proceedings, as also in
the rendition of judgment, which is in the District
Court before you, between Archie A. Cloninger, the
original plaintiff and plaintiff in error, and A. H.
Finlaison, the original defendant and defendant in
error, manifest error hath happened to the damage
of Archie A. Cloninger, the plaintiff in error, as is
said and appears by the petition herein:

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that you under your seal, distinctly and openly, send the record and proceedings aforesaid with all things concerning the same to the justices of the *United Circuit* Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so as to have the same at said place in said circuit on the 11th day of April, 1915, that the record and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein [55] to correct those errors what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 24th day of March, in the year of our Lord, one thousand nine hundred and fifteen.

[Seal]

ARTHUR LANG,
Clerk.

Allowed by:

FRED M. BROWN,
Presiding Judge in the District Court for the Territory and District of Alaska, Third Division.

Filed in the District Court, Territory of Alaska, Third Division. Mar. 24, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, Page No. 33. [56]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Writ of Error (Copy).

The President of the United States of America, To
the Honorable FRED M. BROWN, Judge of the
District Court for the Territory of Alaska,
Third Division, Greeting:

Because in the record and proceedings, as also in
the rendition of judgment, which is in the District
Court before you, between Archie A. Cloninger, the
original plaintiff and plaintiff in error, and A. H.
Finlaison, the original defendant and defendant in
error, manifest error hath happened to the damage
of Archie A. Cloninger, the plaintiff in error, as is
said and appears by the petition herein:

We being willing that the error, if any hath been,
should be duly corrected, and full and speedy justice
done to the parties aforesaid in this behalf, do com-
mand you, if judgment be therein given, that you
under your seal, distinctly and openly, send the rec-
ord and proceedings aforesaid with all things con-
cerning the same to the justices of the *United Cir-
cuit* Court of Appeals, for the Ninth Circuit, in
the City of San Francisco, in the State of California,

together with this writ, so as to have the same at said place in said circuit on the 11th day of April, 1915, that the record and proceedings aforesaid be inspected, the said Circuit Court of Appeals may cause further to be done therein [57] to correct those errors what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 24th day of March, in the year of our Lord, one thousand nine hundred and fifteen.

[Seal]

ARTHUR LANG,
Clerk.

Allowed by:

FRED M. BROWN,
Presiding Judge in the District Court, for the Territory and District of Alaska, Third Division.

[Endorsed as follows]: Filed in the District Court, Territory of Alaska, Third Division. Mar. 24, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, Page No. 33. [58]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Citation on Writ of Error [Original].

The United States of America,—ss.

The United States of America, to A. H. Finlaison
and Maurice D. Leehey and J. J. Finnegan, his
attorneys of record, Greeting:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, to be held at the city of
San Francisco, in the State of California, within
thirty days from the date of this writ, pursuant to
a writ of error filed in the clerk's office of the Dis-
trict Court for the Territory of Alaska, Third Divi-
sion, wherein Archie A. Cloninger, the above-named
plaintiff, is appellant, and you are respondent and
appellee, to show cause, if any there be, why the
judgment in said appeal mentioned should not be
corrected and speedy justice should not be done to
the parties in that behalf.

Witness the Honorable EDWARD DOUGLASS
WHITE, Chief Justice of the Supreme Court of
the United States of America, this 24th day of
March, in the year of our Lord one thousand nine
hundred and fifteen.

FRED. M. BROWN,
Judge of the District Court for the Territory of
Alaska, Third Division.

[Seal] Attest: ARTHUR LANG,
Clerk.

Filed in the District Court, Territory of Alaska,
Third Division. Mar. 24, 1915. Arthur Lang,
Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, Page No. 34. [59]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Citation on Writ of Error [Copy].

The United States of America—ss.

The United States of America, to A. H. Finlaison
and Maurice D. Leehey and J. J. Finnegan, His
Attorneys of Record, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Third Division, wherein Archie A. Cloninger, the above-named plaintiff, is appellant, and you are respondent and appellee, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States of America, this 24th day of

March, in the year of our Lord one thousand nine hundred and fifteen.

FRED M. BROWN,
Judge of the District Court for the Territory of
Alaska, Third Division.

Attest: ARTHUR LANG,
Clerk.

Filed in the District Court, Territory of Alaska,
Third Division. Mar. 24, 1915. Arthur Lang,
Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, Page No. 34. [60]

*In the District Court of the Territory of Alaska,
Division No. 3.*

No. —

ARCHIE A. CLONINGER,

Plaintiff,

vs.

FRANK W. PURDY,

Defendant.

[**Acknowledgment of Service of Bill of Exceptions,
Waiver of (Citation and) Notice of Appeal.**]

The undersigned attorney for the defendant
Purdy hereby acknowledges due service of the Bill
of Exceptions heretofore settled and filed herein, and
hereby waives citation and notice of appeal.

Dated at Seattle, Washington, March 13th, 1915.

MAURICE D. LEEHEY,
Attorney for Defendant.

Filed in the District Court, Territory of Alaska,

Third Division. Mar. 24, 1915. Arthur Lang,
Clerk. By T. P. Geraghty, Deputy. [61]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

Praeceptum for Transcript.

To the Clerk of the Above-entitled Court:

You will please make, certify and transmit forthwith to the United States Circuit Court of Appeals for the Ninth Judicial Circuit at San Francisco, a copy of the record in the above-entitled cause as a return to the writ of error heretofore sued out of said Circuit Court of Appeals to review the judgment in said cause, consisting of the following files and records and proceedings, in said cause:

1st. Amended Complaint.

2nd. Answer.

3d. Motion to Strike from Answer.

4th. Minute Order Denying Motion to Strike from
Answer.

5th. Reply.

6th. Reporter's Transcript of Record.

7th. Plaintiff's Exhibit "B."

8th. Judgment.

- 9th. Order Extending Time for Settling and Filing Bill of Exceptions.
- 10th. Order Settling and Allowing Bill of Exceptions.
- 11th. Assignment of Errors.
- 12th. Petition for Writ of Error.
- 13th. Order Allowing Writ of Error.
- 14th. Bond for Cost on Writ of Error. [62]
- 15th. Writ of Error and Copy.
- 16th. Citation on Writ of Error and Copy of Citation.
- 17th. Waiver of Service of Citation and Notice of Appeal.
- 18th. This Praecipe.

T. J. DONOHOE and
E. E. RITCHIE,
Attorneys for Plaintiff.

Filed in the District Court, Territory of Alaska,
Third Division. Mar. 24, 1915. Arthur Lang,
Clerk. By T. P. Geraghty, Deputy. [63]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C-75.

ARCHIE A. CLONINGER,

Plaintiff,

vs.

A. H. FINLAISON,

Defendant.

United States of America
Territory of Alaska,
Third Division,—ss.

I, Arthur Lang, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the above and foregoing and hereto annexed 64 pages, numbered from 1 to 64, inclusive, are a full, true and correct transcript of the records and files on the proceedings in the above-entitled cause, as the same appears of record and on file in my office.

That this transcript is made in accordance with the plaintiff's and appellant's praecipe on file herein.

I further certify that the foregoing transcript has been prepared, examined and certified to by me, and that the cost of such preparation, examination and certificate, amounting to \$15.00 was paid to me by T. J. Donohoe and E. E. Ritchie, attorneys for the plaintiff and plaintiff in error, Archie A. Cloninger.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this court at Valdez, Alaska, this —— day of March, A. D., 1915.

ARTHUR LANG,

Clerk of the District Court for the Territory of
Alaska, Third Division. [64]

[Endorsed]: No. 2595. United States Circuit Court of Appeals for the Ninth Circuit. Archie A. Cloninger, Plaintiff in Error, vs. A. H. Finlaison, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Third Division.

Filed April 1, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

